*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.16565 OF 2001

%14-09-2004

AMBATI SITARAMAYYA NAIDU AND OTHER

..PETITIONERS

Vs.

$ GOVERNMENT OF ANDHRA PRADESH, REP.BY ITS SECRETARY, PANCHAYAT RAJ & RURAL DEVELOPMENT DEPARTMENT, SECRETARIAT, HYDERABAD AND OTHERS

..RESPONDENTS

! COUNSEL FOR PETITIONERS : MR.K.BALAGOPAL

^ COUNSEL FOR RESPONDENTS 1 TO 3: G.P. FOR PANCHAYAT RAJ AND RURAL DEVELOPMENT

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>HEAD NOTE:

?CASES REFERRED:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 16565 of 2001

Between:

1 Ambati Sitaramayya Naidu S/o Late Muttayya
R/o. Narayanapuram (V), Dachepalli Mandal, Guntur District.
2 Kota Adinarayana S/o. Veeraiah
R/o. Narayanapuram(V), Dachepalli Mandal, Guntur District.

..... PETITIONERS

AND

1 Government of A.P., Rep by its Secretary, Panchayat Raj & Rural

Development Dept, Secretariat, Hyderabad.
2 Commissioner, Panchayat Raj, Government of A.P.., Secretariat,
Hyderabad.

3 District Panchayat Officer, Guntur.
4 State Election Commissioner, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or Writ in the nature of Writ of Mandamus declaring that the action of the Second Respondent in not declaring Narayanapuram, Hamlet of Nadikudi, Dachepalli Mandal, Guntur District as a Separate Panchayat under Sec.3 of the Panchayat Raj Act is an Arbitrary and Unlawful act and further directing him to forthwith do so.

Counsel for the Petitioners: MR.K.BALAGOPAL

Counsel for the Respondents 1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT

Counsel for the Respondent No.4: Sri V.V. PRABHAKAR RAO, S.C.

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.16565 OF 2001

ORDER:

The two petitioners are residents of Narayanapuram village in Dachepalli Mandal of Guntur District. They filed the instant writ petition praying this Court to issue a writ of Mandamus declaring the action of the Commissioner, Panchayat Raj, the second respondent herein, in not declaring Narayanapuram village, hamlet of Nadikudi as a separate Gram Panchayat under Section 3 of A.P.Panchayat Raj Act, 1994 (the Act, for brevity) as illegal and unlawful. They also seek a direction to the second respondent forthwith to constitute Narayanapuram Gram Panchayat as a separate Gram Panchayat.

The case of the petitioners in brief is as follows. Narayanapuram is local area of Nadikudi, whose population is 12,674 as per 1991 census. Out of the same, the population of Narayanapuram is 7,276. The distance between the two places is 3.48

kilometers and Nallavagu separates the two villages. When there are floods, Nadikudi becomes inaccessible. As Narayanapuram is at a distance of 3.48 kilometers, the efficiency of local body has been reduced and the spirit of Part IX of the Constitution of India has been defeated. In these circumstances, the people of Narayanapuram including the petitioners, submitted representation dated 23.12.1999 to concerned authorities seeking bifurcation of Narayanapuram a separate Gram Panchayat. The Government called for report from the Divisional Panchayat Officer, Narasaraopet, who submitted report on 10.03.2000. In spite of the same, the second respondent did not take any action. Therefore, the petitioners filed the writ petition being W.P.No.7528 of 2000 seeking a direction to respondents to bifurcate the village. In the said writ petition, Government of Andhra Pradesh filed counter affidavit stating that the report of the Divisional Panchayat Officer was not received and that fresh census operations were in progress. It was also brought to the notice of the Court that by virtue of Government orders in G.O.Ms.No.62 dated 02.02.2000, the boundaries of villages could not be changed during census operations. This Court disposed of the writ petition on 13.10.2000 recording the submission of the Government that the necessary action will be taken after following due procedure. The petitioners allege that the census operations were concluded on 31.03.2001 and in spite of the same, the second respondent did not take any action to bifurcate the village. The petitioners, therefore, filed Contempt Case being C.C.No.716 of 2001. In view of the averment in the counter affidavit of the Government that if all the conditions are satisfied, the Government would take necessary action, the Contempt Case was closed on 21.06.2001. The petitioners contend that in view of the same, if all the conditions stipulated in A.P.Gram Panchayats (Declaration of Villages) Rules, 1994 (hereafter called the Rules) are satisfied by Narayanapuram, it is incumbent on the part of the second respondent to constitute the Gram Panchayat. Hence, they filed the present writ petition.

The writ petition was filed on the eve of elections to Gram Panchayats in August, 2001. The petitioners therefore filed miscellaneous application being W.P.M.P.No.20715 of 2001 praying for stay of elections of Nadikudi Gram Panchayat scheduled in August, 2001. This Court however dismissed the miscellaneous petition and directed the matter to be listed for final hearing. The learned Government Pleader for respondents 1 to 3 and the learned Standing Counsel for fourth respondent took time for filing counter affidavits but no counter affidavit is filed.

The learned counsel for petitioners Sri K.Balagopal submits that the provisions of the Act especially Section 3 read with Rule 6 of the Rules, casts a duty on the Commissioner to declare a revenue village, which is beyond a distance of two kilometers from the existing revenue village and no discretion is given to the Commissioner for not constituting a separate village. According to the learned counsel, the earlier Rule was substituted by an amendment issued vide G.O.Ms.No.272, Panchayat Raj & Rural Development, dated 18.05.1995 making it mandatory for the Commissioner to declare any village, which is beyond a distance of two kilometers as separate village.

The submission of the learned counsel is totally misconceived and cannot be

accepted. Section 4 of the Act contains a deeming provision. According to the said provision, a Gram Panchayat shall be deemed to have been constituted for a village on the date of publication of the notification under Section 3 of the Act declaring any revenue village or hamlet thereof to be a village for the purposes of the Act. There is no necessity to again constitute a Gram Panchayat in accordance with Section 4 of the Act. A notification issued by the Commissioner under section 3(1) of the Act declaring an area (be it a village or hamlet of a village or area carved out of other villages) to be a village for the purpose of Panchayat Raj Act. Section 3(1) of the Act confers discretion of the Commissioner to do so in accordance with the Rules made by the Government. Though the statute confers power on the Commissioner to declare an area as the village for the purpose of Gram Panchayat Act, such discretion has to be exercised in accordance with the Rules made by the Government. As noticed supra, the Government has made the Rules vide G.O.Ms.No.515, dated 17.08.1994. Rules 3 and 6 of the Rules before they were amended by G.O.Ms.No.272 dated 18.05.1995 read as under:

3. Save as otherwise provided in these rules, ordinarily, every revenue village in areas other than the Scheduled Areas with a population of 3000 (Three Thousand) and more and with an income of rupees 3,000/- (Rupees three thousand) and above per annum in Andhra area and with an income of Rupees 1,500/- (Rupees one thousand and five hundred) and above per annum in Telangana area shall be declared as a village.

6. If a local area comprised in a revenue village or villages which is not in the Scheduled Areas, is beyond a distance of 3 K.Mts. from that revenue village or villages, as the case may be, and has a population of three thousand in Andhra Area and one thousand in Telangana Area and more and an income of rupees three thousand and above per annum in the Andhra Area and rupees fifteen hundred and above per annum in the Telangana Area, it may be declared as a separate village:

Provided that, for reasons to be specified in the notification, any such local area, which is beyond a distance of three kilometers may, irrespective of its population and income also be declared as separate village;

Provided further that the Commissioner may, for special reasons, such as geographical features, communication facilities, or viability may declare one or more revenue villages which are at a distance of three kilometers or less into a separate village, irrespective of its population and income.

A reading of both the above Rules prior to amendment would show that every revenue village in Andhra area with a population of three thousand and more with an annual income of Rs.3,000/- (Rupees three thousand only) and revenue village in Telangana area with population of one thousand and more with an annual income of Rs.1,500/- (Rupees one thousand five hundred only), shall have to be declared as a revenue village. Further as per Rule 6 of the Rules, a local area, which is already included in a revenue village and is beyond a distance of three kilometers from the revenue village or villages, with a population of three thousand in Andhra area and one thousand in Telangana area may be declared as separate village duly bifurcating the said local area from the existing revenue village. The second proviso to Rule 6 also empowered the Commissioner to constitute a separate revenue

village even if the population is less than what is prescribed in Rule 3. Thus Rules 3 and 6 of the Rules read together confer discretion on the Commissioner either to constitute or not to constitute a village or local area into a separate revenue village even if such places satisfy the criteria contained in Rules 3 and 6.

After amendment by G.O.Ms.No.272 dated 18.05.1995, Rules 3 and 6 of the Rules read as under:

3. Save as otherwise provided in these rules ordinarily every revenue village including scheduled areas with a population of 1000 and more shall be declared as a village:

Provided that the number of Gram Panchayats in a Mandal Parishad Territorial Constituency shall not exceed three Gram Panchayats, as far as practicable.

6. If a local area comprised in a revenue village or villages which is beyond a distance of two Kilometers from that Revenue Village or villages, as the case may be, and has a population of the thousand and more, shall be declared as a separate village.

After amendment as above, the position is that if the local area comprised in a revenue village is beyond a distance of two kilometers with a population of one thousand and more shall have to be declared as a separate village subject to amended Rule 3. Rule 3 now restricts the power of the Commissioner, who cannot constitute more than three Gram Panchayats in a Mandal Parishad Territorial Constituency. To say in other words, if in a Mandal Parishad Territorial Constituency there are already three Gram Panchayats, that is, if there are already three revenue villages, yet another separate village cannot be constituted. Rule 6 cannot be read independently ignoring Rule 3. Nowhere in the affidavit of the petitioners, it is stated that even if the Commissioner constitutes a separate revenue village for Narayanapuram local area included in Nadikudi Gram Panchayat, the same would not violate Rule 3. Be that as it is, the issue whether the Commissioner should constitute a separate village in respect of a local area or whether an area should be merged with the existing revenue village, are all matters, which are within the discretion of the Commissioner. These issues, unless *mala fide* is attributed, are not justiciable.

A reference may be made to the decision of the Supreme Court in **J.R.Raghupathy v State of A.P..** In the said judgment, it was held that the establishment of revenue mandals and location of headquarter for such mandals are matters entrusted to the Executive, which is expected to take decision in exercise of discretion. Unless and until, the decision of the State Government is shown to be arbitrary and capricious or one not reached in good faith, a writ petition would not lie. It was also held that the authority in which, a discretion is vested can be compelled to exercise the discretion but such authority cannot be ordained to exercise such discretion in a particular manner. In this case, the petitioner already approached this Court earlier by filing W.P.No.7528 of 2000, which was disposed of directing the

Commissioner to take appropriate action after considering the report of the fourth respondent. The Contempt Case filed by the petitioner was also dismissed. Again the petitioner filed the writ petition seeking a writ of Mandamus, which in my considered opinion cannot be issued especially when the Commissioner as per Section 3 of the Act has given discretion. When the Commissioner decides to exercise such discretion under Section 3 of the Act, then only he has to observe the Rules made by the Government. Even before the Commissioner initiates any action, he cannot be compelled to initiate such action merely because the petitioners feel that there is necessity for constituting Narayanapuram as a separate village for the purpose of the Act.

The writ petition is devoid of any merits and is accordingly dismissed.

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(V.V.S.RAO,J)

14.09.2004.

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Note: LR Copy be marked.

By Order

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To

One fair copy to the Hon,ble Sri Justice V.V.S. Rao (for his Lordships kind perusal)

1. The Secretary, Government of A.P., Panchayat Raj & Rural Development Department, Secretariat, Hyderabad.

2. The Commissioner, Panchayat Raj, Government of A.P., Secretariat, Hyderabad.

3. The District Panchayat Officer, Guntur.

4. The State Election Commissioner, Hyderabad.

5. 2 CCs to G.P. for Panchayat Raj, High Court Buildings, Hyderabad (OUT)

6. 8 L.R. copies.

7. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

8. The Secretary, A.P. Advocates Association, Library, High Court Buildings, Hyderabad.

9. 2 C.D. Copies.